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The Prerequisites for Default Judgment and Grounds for the Vacation of Default Judgment as per the Civil Procedure Code of Georgia

[Przesłanki wydania wyroku zaocznego oraz podstawy jego uchylecia według gruzińskiego kodeksu postępowania cywilnego]

Abstrakt

Wyrok zaoczny pozostaje nader problematycznym i specyficznym zagadnieniem w cywilnym prawie procesowym Gruzji. Gruzjińskie ustawodawstwo przewiduje kilka podstaw do wydania wyroku zaocznego, są tu jednak pewne dyskusyjne kwestie, które mogą wystąpić w praktyce.

Niniejsza praca analizuje przesłanki wydania wyroku zaocznego i jego skutki prawne dla stron. Odnosi się ona wyłącznie do gruzińskiego ustawodawstwa i nie zawiera uwag prawnoporównawczych dotyczących innych państw. Celem jest analiza gruzińskiego orzecznictwa i dominującej praktyki sądowej Sądu Najwyższego Gruzji.

Wyrok zaoczny był bardzo kłopotliwy zwłaszcza w okresie pandemii COVID-19, istnieje zresztą kilka spraw sądowych z tym związanych. Z tej racji artykuł w całości opiera się na praktyce sądowej i podejmuje konkretne problemy. Na końcu znajduje się wniosek podsumowujący badania.

Słowa kluczowe: wyrok zaoczny, postępowanie cywilne, przesłanki wyrokowania.

Introduction

In private legal matters, the court's decision is crucial for protecting the rights of those involved in civil transactions. The Civil Procedure Code of

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Georgia outlines different types of court decisions, including one that stands out as both interesting and problematic: the default judgment.

This article seeks to explore the conditions necessary for the default judgment and the reasons for its annulment. To analyze these matters, it examines contemporary trends in Georgian legal literature and court practice. The paper culminates in a conclusion that consolidates the findings of this analysis.

Prerequisites for a Default Judgment

According to the Georgian legal literature, existence of the default judgment institution helps to raise the level of responsibility of the parties to participate in civil proceedings, taking into account the principle of disposition and competition.¹ The civil procedure code of Georgia comprehensively outlines the prerequisites for a default judgment. The procedure involved in obtaining a default judgment is distinguished by specific characteristics stemming from the nature of this legal institution. Firstly, it's important to highlight that a default judgment doesn't include the legal assessment or the laws that guided the court, as it lacks a reasoning part. According to Article 234 of the Civil Code, a default judgment generally aligns with the prerequisites and specifications set for a court decision, albeit without containing a reasoning part. The absence of a reasoning part in a default judgment holds significant procedural and legal implications, especially concerning the appeal process. In a specific case, the Tbilisi Court of Appeal emphasized that while reviewing the appealed decision, the Court of Appeal can verify its legality. However, it faces limitations in assessing the accuracy of the initial court's conclusion as the decision lacks a reasoning part in this respect.² One of the important reason for the default judgement is that a claimant or a respondent does not have an interest for this dispute.³

To ensure clarity, it's essential to examine the conditions for obtaining a default judgment separately. Additionally, it's noteworthy that according to an analysis of the Civil Procedure Code of Georgia and the practice in Georgian courts, the only court where a default judgment cannot be issued is the Supreme Court of Georgia.

¹ Sh. Kurdadze, *Reviewing the civil cases in the court of first instance*, Tbilisi, 2006, p. 931.

² The judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on May 14, 2015, in case No 2b/4948-14.

³ Sh. Kurdadze, N. Khunashvili, *The problems related to the rendering an appealing of the default judgement*, *The Law and the World Journal*, 2, Tbilisi 2015, p. 56.

Non-Appearance of the Claimant

One of the conditions for obtaining a default judgment is the absence of the claimant. As per the initial part of Article 229 of the Code of Civil Procedure, in cases where the claimant, duly notified according to the Code's procedure, fails to attend the court session and upon the respondent's request, the court may issue a default judgment regarding the dismissal of the claim. According to the Civil Procedural Code of Georgia the one of the main ground of default judgement is that the court had to informed the parties in advance the probability to render the default judgement.⁴

In instances where the claimant doesn't show up, whether the court accepts a default judgment largely relies on the respondent. The respondent must formally ask for a default judgment, either during the proceedings or in writing attached to the case file, for the court to issue a default judgment against the absent claimant, ultimately leading to the dismissal of the claim.⁵ It should be noted that if the claimant does not enter in the court in the second occasion the court render the default judgement in spite of the contradiction position of the respondent.⁶

In situations of mandatory joint participation, if multiple claimants are involved in the case simultaneously, the presence of one co-participant stands as the presence of all co-participants. If any of the required co-participants attend the court session, the court is obligated to issue a regular decision based on the case file rather than a default judgment. If none of the required co-participants (co-claimants or co-respondents) have been identified, the court has the authority to issue a default judgment, adhering to the stipulations outlined in Articles 229–230 of the Civil Procedure Code of Georgia. Moreover, if neither party (co-claimant nor co-respondent) attends the court session, the court has the discretion to issue a judgment dismissing the claim without prejudice. In such instances, the court is required to deliver a judgement on dismissing the claim without prejudice.⁷

Non-Appearance of the Respondent

As per Article 230 of the Code of Civil Procedure, if the respondent, who received the notice as prescribed by the Code, fails to attend the court session and the claimant asks for a decision in the respondent's absence, the factual

⁴ Sh. Kurdadze, Reviewing..., p. 932.

⁵ Z. Dzlierishvili, Commentary on the Code of Civil Procedure, Selected Articles, Tbilisi 2020, p. 813.

⁶ S. Chkhaidze, *The default judgement in civil proceeding, Analysis of court practice*, "The Law and Justice" 2012, 4, p. 39.

⁷ Z. Dzlierishvili, Commentary..., p. 818.

circumstances outlined in the claim are deemed to be substantiated or proven. If the circumstances outlined in the claim legally support the claim, it will be granted in favor of the claimant. Otherwise, the court will deny the claimant's request.

The requirement that the factual circumstances mentioned in the claim must justify the claim has been emphasized by the Supreme Court. Court states that, in accordance with Article 230 of the Code of Civil Procedure, in order to render a decision in the respondent's absence, it must be demonstrated that the facts detailed in the claim legally support the claim. As per the Supreme Court's interpretation, for the court to grant the claim through a default judgment, the judge is obligated to ascertain whether the established factual circumstances legally validate the request from a legal perspective.⁸

According to Article 230, if the respondent fails to appear, the court can issue a default judgment only when three specific conditions align simultaneously: First, if the claimant requests a default judgment; Second, if there are no circumstances impeding the issuance of a default judgment, which are provided for by the first part of Article 233 of the Code of Civil Procedure of Georgia, and third, if the factual circumstances specified in the claim and considered approved legally justify the claim.

Voluntary Leave from the Court Session

Sometimes a party involved in a case may express motions to the court, and if these motions are rejected, they might leave the session as a form of a protest. In such circumstances, the court can issue a default judgment, adhering to one essential condition: prior to commencing the case proceedings (as prescribed in Article 217 of the Civil Code and part 2 of Article 212 of the Civil Code), the court is required to notify the parties that failure to attend or departure from the hearing without court permission will be regarded as a failure to appear, resulting in the issuance of a default judgment.⁹

Article 212 of the Code of Civil Procedure outlines the obligation of parties to attend the case hearing until its conclusion and to follow the court's directives. Nevertheless, as per Article 212, part 2, the court forewarns the parties that leaving the session arbitrarily will result in the issuance of a default judgment against them.

⁸ The judgment rendered by the Supreme Court of Georgia on May 11, 2018, in case No AS-1468-1388-2017.

⁹ Z. Dzlierishvili, Commentary..., p. 792.

Absence of the Statement of Defence

In order to render a default judgment on the basis of non-presentation of the response, it is necessary for the court to set a specific deadline for the respondent to present the objection/response.¹⁰ In a particular instance, the Tbilisi Court of Appeal clarified that the procedural norms governing appellate proceedings do not contain specific rules concerning the submission of an appellate response. Instead, it suggested applying Article 201 of the Civil Code, which addresses the obligation to submit a response to the courts of the first instance. As per paragraph 7 of the referenced article, if the response is not submitted within the court-designated period for dishonest reasons, the judge may issue a default judgment. As per the court's interpretation, derived from the content of the norm, the legislator stipulates the potential issuance of a default judgment against a party for their failure to orally present their position regarding the appeal made by the opposing party (appellant), thus allowing judgment without an oral hearing for appeal resolution. This can be considered a form of sanction. As per the Court of Appeals' reference to Article 232¹ of the Code of Civil Procedure, if the failure to submit an answer (opposition) within the court-set timeframe occurs due to an improper reason, the judge is mandated to issue a default judgment without an oral hearing.¹¹

It's important to highlight that, owing to the inability to raise an objection during proceedings in the appellate instance, court practice dictates that a default judgment is not issued. Considering principle of limited appeal, wherein the appellate court sometimes engages in fact-finding, it's crucial to note that the submission of new facts and evidence to the appellate court is permissible only in exceptional cases defined by the law. Consequently, it can be inferred that the absence of an objection submitted to the appeal does not hinder the Court of Appeal from rendering a decision.¹²

Refusal to Engage in Reviewing Proceedings in Court

One of the purposes of the default judgment institution is to force the party to participate in the proceedings and not to delay the case.¹³ One of the grounds for obtaining a default judgment is when a party, despite appearing in court, refuses to participate in the hearing. Article 232 of the Code of Civil

¹⁰ Sh. Kurdadze, N. Khunashvili, *The problems...*, pp. 633 and 634.

¹¹ The judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on June 16, 2015 on case No 2b/137-15

¹² Z. Dzlierishvili, *Commentary...*, pp. 855–857.

¹³ T. Liluashvili, *Civil Procedural Law*, second edition, Tbilisi, 2005, p. 87.

Procedure outlines the responsibility of a party present in court to engage in the review a matter. Specifically, a party who, despite being present at the scheduled court session but declines to participate in the case's consideration, is deemed as not having appeared. Consequently, a default judgment may be made against an individual who chooses not to participate in the case's consideration.

The participation of both parties in the proceedings holds multifaceted significance, as it enables the court to ascertain the factual circumstances of the case in accordance with the principle of adversarial proceedings. However, what course of action should the court take when one of the parties fails to appear for the hearing despite being duly notified of the time and location in accordance with the law? The adjudication of the case and the dispensation of justice in such instances cannot be contingent upon the willingness of one party.¹⁴

Grounds for Cancellation of Default Judgment

Failure to Serve a Judicial Summons

Naturally, for a party to attend court proceedings, they must receive information about the scheduled hearing time, typically provided through the service of a judicial summons. One of the fundamental procedural rights of a party is to partake in the case's consideration. Corresponding to this right is the court's obligation to inform the party about the scheduled time and location of the hearing, as outlined by the procedure established in Articles 70–78 of the Civil Code.¹⁵

Serving a judicial summons can also be accomplished using a telephone or other technical means. In a particular case, the Tbilisi Court of Appeals upheld the default judgment, as it deemed that the court had sent a telephone message to the phone number provided by the party in the appeal.

The complainant highlights the absence of an invitation to the court session in compliance with Articles 70–78 of the Code of Civil Procedure as the grounds for requesting the cancellation of the default judgment. The Appeals Chamber highlighted that in this instance, the appellant had been contacted using the phone number previously provided. Furthermore, the Chamber noted that as per the provisions in the Civil Procedure Code of Georgia per-

¹⁴ The judgment rendered by the Civil Affairs Chamber of the Supreme Court of Georgia on May 4, 2023 in case No AS-6-2023.

¹⁵ Z. Dzlierishvili, Commentary..., p. 861.

mitting communication through telephone, the court issues notifications to the phone number indicated by the party. If the party transfers the specified number to a non-permanent resident family member, the associated risk falls upon the said party.¹⁶

The Supreme Court has consistently emphasized that an agency delivered through technical or telephone means must mirror the content of a physical agency. As per the Supreme Court's clarification, parties and their representatives should receive notifications in the prescribed manner, underscoring the significant practical importance of accuracy in delivery.

The court is mandated to verify whether the written statement or its delivery via telephone adheres to the stipulations outlined in Article 72.1 of the Civil Code, ensuring its compliance with the prescribed requirements. As procedural rules grant equal rights and obligations to the conflicting parties, it becomes imperative for the court to rigorously adhere to these regulations. Such adherence should not be perceived as an overly strict interpretation of the norm, but rather as a necessary precision in application.¹⁷

Absence of the Subject Matter of Dispute

The absence of the subject of the dispute constitutes one of the grounds for nullifying the acquired default judgment. Additionally, as per Article 272, part A1 of the Code of Civil Procedure, if there is a lack of subject matter in dispute, the proceedings should be terminated. The Tbilisi Court of Appeal revoked the default judgment issued by the Tbilisi City Court. Despite acknowledging the respondent's inexcusable absence, the Court of Appeal nullified the default judgment on the grounds of a perceived absence of the subject matter in dispute. Specifically, the case revolved around postal transportation, wherein the claimant's claim surpassed the limitations set by the Universal Postal Convention. The claimant had no entitlement to demand more from the respondent than what was stipulated by the Universal Postal Convention. Considering that the claimant was compensated for the relevant costs within the confines specified by this convention, the appeals court concluded that there was no substantial subject in dispute. Hence, the court annulled the default judgment issued on February 22, 2021, by the Tbilisi City Court.¹⁸

¹⁶ The judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on March 29, 2016 in case No 2b/33-15.

¹⁷ The judgment rendered by the Supreme Court of Georgia case No AS-930-888-2013 on June 19, 2015; No As-1188-1148-2016, July 24, 2017.

¹⁸ The judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on April 22, case No 2b/2622-21.

Failure to Promptly Provide the Party with Information Regarding the Factual Circumstances

The court is consistently obligated to verify the presence of any impediments that might obstruct the issuance of a default judgement, as specified by the initial section of Article 233 of the Code of Civil Procedure, specifically assessing whether the following factors are evident:

- (a) The party was not properly summoned in accordance with the procedure outlined by Articles 70–78 of the Code of Civil Procedure;
- (b) The court was made aware of unforeseen circumstances or events, such as *force majeure*, that might hinder the party from appearing in court on time;
- (c) The party not properly notified within an appropriate timeframe regarding the factual circumstances of the case;
- (d) There are no grounds or prerequisites for initiating a lawsuit.¹⁹

According to the regulations outlined in Article 184 of the Code of Civil Procedure, the respondent is required to promptly dispatch copies of the claim, attached documents, and all other relevant materials containing information about the factual circumstances presented against them by the claimant. Simultaneously, the claimant should receive the written response and other submitted materials from the respondent, as stipulated in Articles 201 and 203 of the Civil Code. “Being notified in time” implies that the party should receive such information during the case preparation stage or, exceptionally, after this stage concludes, with a reasonable assumption that the party can adequately prepare for the court session.²⁰

Force Majeur and Reasonable Cause

Another basis for overturning a default judgment is the existence of *force majeure* or justifiable cause. A default judgement will be revoked if the party’s absence is a result of *force majeure* or other valid reasons²¹. As per Article 215, part 3 of the Code of Civil Procedure, the failure to carry out a specific procedural action will be deemed excusable if it is due to reasons such as illness, the demise of a close relative, or other objective circumstances that could reasonably hinder a party from fulfilling the action. The illness must be substantiated by a document endorsed by the head of the medical institution, explicitly stating the incapacity of the individual to appear at the court. The grounds for annulling a default judgment are outlined in the initial section of Article 233,

¹⁹ The judgment rendered by the Civil Affairs Chamber of the Supreme Court of Georgia on July 21, 2023 in case No AS-791 2023.

²⁰ Z. Dzlierishvili, Commentary..., p. 861.

²¹ The judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on November 4, 2013 on case No 2b/3610-13.

yet the enumerated list within this Article is not comprehensive. The party, who was absent and faced with a default judgment, has the right to indicate other circumstances that led to their non-appearance at the court session, which they were unable to inform the court about in due time. Additionally, the legislator mandates that the party must provide prior notification about their inability to attend the court session and the underlying reason, unless it is unfeasible to give such notification before the session.

The responsibility to substantiate the circumstances presented in the complaint as an honorable justification for non-appearance lies with the appellant. The evaluation of these circumstances, in terms of the credibility of the party's absence, falls within the court's jurisdiction.²²

In a particular case, the Tbilisi Court of Appeal nullified the default judgment issued by the Tbilisi City Court because the party's absence was attributed to an honorable reason. As per the appellate court, in accordance with Article 241 of the Code of Civil Procedure, if a party's non-appearance was due to another valid reason (for example COVID-19 symptoms) that they were unable to timely inform the court about, the default judgment should be revoked, and the case should be reexamined. In this instance, it was confirmed that the respondent had notified the court in advance about their incapacity to attend the court session, providing a substantiated explanation supported by a hospital document submitted by them.²³

As per the established practice of the Supreme Court of Georgia, if objective circumstances are confirmed, the party's absence is considered justifiable. In such cases, it is impermissible to ascertain both the significant factual circumstances for the case and the legal outcome pertaining to this party through the procedure typical of a default judgment. If this were not the case, there would arise a scenario where a default judgment would serve as a penalty not only for irresponsible individuals or those disinterested in the process but also for those genuinely invested in the proceedings yet unable to attend the court session due to justifiable circumstances. The normative content of Article 233 of the Civil Procedure Code of Georgia governs these situations to ensure that a party is not denied the right to a fair trial, and that their absence does not unilaterally result in a sanction in every instance.²⁴

²² The judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on November 4, 2013 on case No 2b/3610-13.

²³ The judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on November 4, 2013 on case No 2b/3610-13.

²⁴ The judgment rendered by the Supreme Court of Georgia on March 13, 2020, on case No As-1504-2019.

Conclusion

According to the presented analysis, it can be stated that default judgment exhibits specific characteristics that pose considerable challenges and relevance in practice. Primarily, it should be highlighted that it serves as a form of sanction directed at one of the parties involved in the legal dispute, intending to penalize this party in an indiscriminate manner. An issue of concern in Georgian court practice arises when a default judgment is initially issued, only to later reveal that there were no valid grounds for such a decision. Subsequently, the concerned party lodges an appeal, contesting the lack of justification behind the decision. If the court is persuaded by the party's accurate and well-supported statement, it nullifies the default judgement. In practical terms, one common basis for overturning a default judgment is the existence of *force majeure* or justifiable cause.

The default judgment obtained will be revoked if the party's absence is attributed to *force majeure* or another valid reason. In this scenario, the party must substantiate that the absence or incapacity to appear in court or present evidence was due to *force majeure* or similar circumstances. This matter became notably pertinent during the pandemic when a party faced challenges in attending court due to COVID-19 symptoms. Consequently, in accordance with Georgian law and judicial practice, the court is mandated to examine whether there exist valid reasons for issuing a default judgment. Furthermore, if the decision is appealed, the court must ascertain whether the previously rendered decision is founded on legal grounds as defined by law. If the court is persuaded by the party's assertion, such as the inability to attend court due to *force majeure* or an inability to present a response, it will overturn the already received default judgment. Moreover, it's crucial to note that when issuing a default judgment, the court refrains from reviewing evidence or conducting an in-depth investigation. Instead, it solely considers the facts outlined in the claim and, based on the claim's content, issues a default judgment if the factual circumstances specified in the claim legally support the claim.²⁵ In this context, it is essential to highlight that, according to the analysis of the Civil Procedure Code of Georgia and the prevalent judicial practice, the only court where a default judgment cannot be issued is the Supreme Court of Georgia.

²⁵ The judgment rendered by the Supreme Court of Georgia on July 24, 2023, on case No AS-479-2023.

Abstract

Default judgment remains a highly problematic and specific issue in Georgia's civil procedural law. Georgian legislation stipulates several grounds for default judgment, however, there are some problematic issues that may arise in practice.

This paper analyses the grounds for granting a default judgment and its legal consequences for the parties. It refers only to Georgian legislation and does not include comparative legal comments on other states. The aim is to analyse Georgian case law and the prevailing judicial practice of the Supreme Court of Georgia.

Default judgment was very troublesome especially during the COVID-19 pandemic, and there are several court cases related to it. Accordingly, the article is entirely based on judicial practice and addresses practical problems. It ends with a conclusion summarising the research.

Keywords: default judgment, civil proceedings, grounds for judgment.

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